THE HON'BLE SRI JUSTICE M.S. RAMACHANDRA RAO

C.C.C.A.No.55 of 1996

JUDGMENT:

This appeal is filed challenging the judgment and decree dt.16-10-1995 in O.S.No.661 of 1985 of the Additional Chief Judge, City Civil Court, Hyderabad.

2. The appellant herein is the plaintiff in the above suit. Pending appeal, he died and his legal representatives have been impleaded as appellants 2 to 19.

3. The suit was filed by the plaintiff seeking declaration of his title in respect of an extent of Ac.7.00 gts in Sy. No.162 (old) corresponding to Sy Nos.10 and 11 (new) situated at Mallepally, Hyderabad, for delivery of vacant possession thereof after demolition of the buildings constructed by 4th defendant Association or to grant compensation to plaintiff at market value.

4. The plaintiff claims that he is a perpetual lessee under a perpetual lease on 20th day of November 1957 granted to him by one Smt.Zohra Begum; that the said Zohra Begum was the wife of one Mahdi Mirza Khan, who is the son of Safdar Mirza Khan; and that the plaint schedule property was part and parcel of Ac.990 belonging to Safdar Mirza Khan of which he was the Jagirdar; and that when Safdar Mirza Khan died, his son Mahdi Mirza Khan was only a minor and therefore, the Mallepaly jagir was managed by Hasan Ali Mirza Khan, the brother of Safdar Mirza Khan. He alleged that Hasan Ali Mirza Khan also died leaving behind 2 sons Ahmed Ali Mirza and Abbas Ali Mirza; that in 1342 Fasli, the then City Improvement Board of Hyderabad, the

predecessor in interest of the 2nd defendant, acquired 124 Bighas and 18 guntas for the purpose of building houses after getting the said land declared as non-agricultural and also paid compensation; disputes were raised by the children of Safdar Mirza Khan and Zohra Begum before the Sarfekhas Mubarak for grant of pattas in their name; that the Secretary, Sarfekhas Mubarak settled the matter on 17th Meher 1344 Fasli ; under Clause 4 of the said compromise, she was held entitled to possession and enjoyment of the land of extent Ac.177.03 gts situated beyond Third Lancer and opposite to the new quarters of the City Improvement Board adjoining Dhobi Ghat Mosque; one month thereafter difference arose between Ahmed Ali Mirza and Abbas Ali Mirza as to interpretation of Clause 6 of compromise; that these differences were settled on 6th Aban 1344 Fasli by another compromise modifying Clause 6 with a small amendment and the same was also notified and confirmed by the Secretary Sarfekhas Mubarak in his order No.5186 dt.10th Aban 1344 Fasli; and pattas were granted pursuant to the said compromise and one such patta was granted for an extent Ac.177.03 gts in Sy. No.162 in the name of Zohra Begum.

5. He alleged that Army personnel of the erstwhile Hyderabad State later started trespassing in the said land ; on a representation made by her, the regular army of Hyderabad State took Ac.150 of her land on yearly rent of Rs.12/- per acre from 12th Aban 1347 Fasli and this was confirmed by Minister Sarfekhas Mubarak on 14th Aban 1347 Fasli.

6. He contended that subsequent thereto Ahmed ali Mirza died leaving behind 2 sons Maqbool Ali Mirza and and Mahmood Ali Mirza ; being eldest son Maqbool Ali Mirza became

estate holder; later he also died leaving behind a minor son Yousuf Ali Mirza; so Mahmood ali Mirza became the manager of the estate and as he was not managing the estate properly, it's management was taken over by the Court of wards; Zohra Begum made application to said Court to evict the army from possession of Ac.4.02 gts of her land besides the 150 acres of leased out in Sy.No.162; the army then vacated this Ac.4.02 gts and delivered possession to Court of Wards on 25th day of Khurdad 1352 fasli; but possession thereof was not delivered to her by Court of Wards doubting her title.

7. He contended that she filed suit No.83/1 of 1352 Fasli before Munsiff Court, Hyderabad West against the Court of Wards for possession of this bit of land while seeking a declaration of her title to all lands in Sy.No.162 which came to be decided in her favor on 27-01-1951; that pending this suit, rents were not paid by the Army to her; and by this time, the erstwhile Hyderabad State was no longer in existence. It is alleged that she then applied to the District Collector of Hyderabad to record her name in the land records in the place of the disbanded Army with respect to Ac.150.00 gts leased out to the Army; and that this was allowed on 11-08-1953 by which date Sy.No.162 was divided into new Sy.No.s 10 and 11.

8. He contended that thus Zohra Begum was exclusive owner and possessor of Ac.177.3 gts in Sy.No.162 ; that she had executed a registered lease deed dt.20.11 1957 in favor of plaintiff of Ac.7.00 gts which formed part of the lands in old Sy.No.162 corresponding to new Sy.No.s 10 and 11; thereafter, plaintiff , who was in possession, prepared a layout and submitted to Municipal Corporation of Hyderabad; it was forwarded to the Town planning Department; and since 2nd defendant i.e. the State of Andhra

Pradesh tried to interfere with her possession, she is filing the present suit.

9. The 1st defendant filed a written statement contending that the plaintiff has previously filed O.S.No.27 of 1963 on the file of the Additional Chief Judge, City Civil Court, Hyderabad at Secunderabad against 1st defendant for recovery of possession of Ac.50.00 cts of land covered by Sy No.162 situated in Mallepally, Hyderabad and the same was dismissed; that he had preferred C.C.C.A.No.122 of 1973 to the High Court which was also dismissed on 21-09-1976; and therefore, the present suit is barred by *resjudicata* and liable to be dismissed in limini. It contended that in the judgment dt.21-09-1976 in C.C.C.A.No.122 of 1973, the High Court has held that the revenue authorities never recognized title of Zohra Begum to the extent of Ac.177.03 gts in old Sy. No.162 and no patta was granted to her and she could not produce a single receipt to show payment of land revenue though she was alive till 1957. It is contended that there was no evidence to show that she had received any amount from the Army which is said to have been in occupation of 150 acres of land on lease from her. It is contended that assuming that she had any patta of the extent of Ac.177.03 gts. in old Sy. No.162 of Mallepally, since it formed part of Mallepally Jagir and the said Jagir was abolished by the Jagir Abolition Regulation 1358 Fasli and compensation was already paid to the Jagirdar and Hissedars, she had no subsisting title to the property and that the State of Andhra Pradesh became entitled to the plaint schedule property on the abolition of Jagir. It contended that on 11-08-1977 the District Collector has passed orders directing Special Deputy Collector, Land Enquiries, Hyderabad to take possession and the latter after taking possession, directed the Tahsildar to deliver possession to 1st

defendant on 05-09-1977 an extent of Ac.5.41 gts and the same was delivered on that day. It contended that Zohra Begum or plaintiff were never in possession of the suit land and 1st defendant was in possession of the property. It further contended that plaintiff had filed O.S.No.1023 of 1969 before the IV Assistant Judge, City Civil Judge, Hyderabad for permanent injunction against 1st defendant and it was dismissed on 28-01-1977 and the said judgment was also confirmed in C.R.P.No.94 of 1978. It contended that the plaintiff or Jagirdar have no title or possession of the plaint schedule property at any time. It prayed for dismissal of the suit.

10. The 2nd defendant i.e. State of Andhra Pradesh filed a written statement refuting the contentions of the plaintiff. It contended that although the plaint schedule property was part and parcel of Mallepally Jagir and in the Muntakhab of 1348 fasli, it was not described as such since it was part of ex-army land of Nizam . It also denied that the Jagir land ever comprised of 990 acres and alleged that it was only for 306 Bighas 15 bams, out of which 164 bighas 18 bams were acquired by the City Improvement Board. It contended that the total extent of Jagir was only 106 acres and Zohra begum's share was only 21 acres and not Ac.177.03 gts as claimed by her. It also contended that in an initial survey of Mallepally village, announced in 1335 Fasli, there were only 68 survey numbers and there was no survey number 162 admeasuring Ac.177.03 gts. It contended that Sy. No.162 is of 1309 Fasli, the survey of which was neither announced nor modified in the records under the provisions of the then Hyderabad Land Revenue Act 1370 Fasli. It contended that the plaintiff had created several documents by taking certain papers from the office of Court of Wards. It also contended that judgments

in O.S.No.27 of 1963 and in C.C.C.A.No.122 of 1973 have been rendered on the same issue and they would constitute *resjudicata*. It contended that records indicate that from 1950 capt.Z.A.Hasmi was in actual possession and enjoyment of the land under a valid lease deed granted by Army authorities till 1977 and after him 1st defendant has been in possession of the land. It also pleaded that plaintiff' s daughter Smt.Nasreen Banu and 5 others had filed O.S.71 of 1969 for Ac.503 .36 gts and in the alternative sought compensation of Rs.9 Crores which was dismissed on 31.8.1976 wherein plaintiff was main witness and therefore prayed that the suit be dismissed.

11. Defendant Nos.3 and 4 did not choose to contest the matter and remained *ex parte.*

12. The trial Court framed the following issues:-

1. Whether the plaintiff is entitled for declaration of title to the suit land?
2. Whether the plaintiff is entitled for injunction restraining the defendants from interfering with possession of plaintiff over the suit land?
3. Whether the suit is barred by *resjudicata* by the judgment O.S.No.27/63 and C.C.C.ANo.122 of 1973?
4. Whether the plaintiff and his predecessors-in-title were not in possession of suit land?
5. Whether D-1 is the absolute and exclusive owner and possessor of the suit land?
6. Whether the plaintiff inducted his nominees into the suit land who raised unauthorized constructions and whether they are necessary parties to the suit?
7. Whether the suit is not properly valued?
8. Whether the suit is hit by not issuing notice u/s.68 of A.P. Housing Board Act?
9. Whether the defendants 1 to 3 are entitled for exemplary costs?
10. Whether there is no valid notice u/s.80 CPC?

11. Whether the suit is bared by time?

12. Whether D-4 society and its members purchased the suit land from its owner and constructed huts and are in possession of it?

13. To what relief?

13. By judgment and decree dt.16-10-1995, the trial Court dismissed the suit. It held that the plaintiff and his predecessor Zohra Begum were bound by the judgment in O.S.No.27 of 1963 which was confirmed in C.C.C.A.No.122 of 1973 and that neither Zohra Begum nor the plaintiff had title or possession to the plaint schedule property. It held that the facts pleaded in O.S.27 of 1963 by plaintiff are no different from those pleaded by him in the present suit except that the former suit was for Ac.50.00 while the present suit is for Ac.7.00.

14. It also held in CCCA.No.122/1973, this Court took the view that the location, identity and extent of old Sy. No.162 have not been established by evidence on record; that in the lease deed Ex.A-1 dt.08-09-1952 executed by Zohra Begum in favour of the plaintiff for Ac.50.00, neither survey number nor extent was mentioned and it was also not established that it was returned or signed by Zohra Begum. Merely because certain documents were produced by D.W.5, it held that their truth and genuineness cannot be presumed. It also held that if really a lease had been granted by Zohra Begum to the Hyderabad Army, there would be a lease deed, but such lease deed has not been produced, no explanation was furnished for its non-production and no receipt has been produced to show that she received rents from the Army. It also held that the if lease has been taken from Zohra Begum by the Army, possession would have been restored by the Army to Zohra Begum and not to the Government of Hyderabad and although this happened, Zohra Begum never protested. It therefore held

that the plaintiff failed to establish that Zohra Begum was entitled to an extent of Ac.177.03 gts of land in old Sy. No.162 in Mallepally village or that she has possession of the same at any time much less within 12 years prior to the date of the suit. It also rejected the contention of the plaintiff that fraud was played by 1st defendant on the Court in O.S.No.27 of 1963. It held that even though the properties are different, there is identity of title between the present litigation and O.S.No.27 of 1963 and in view of decision in **Smt. Raj Lakshmi Dasi and others Vs. Banamali Sen and others**[1], the latter decision in O.S.No.27 of 1963 would operate as *resjudicata*. It also held that persons in possession were not impleaded even though they would be necessary parties and had been inducted by the plaintiff. It also held that the Court Fee paid is highly inadequate and plaint was not properly valued.

15. Challenging the same, this appeal is filed.

16. Heard Sri T. Sharath, learned counsel for the 2nd appellant/L.R. of plaintiff, Sri J.Prabhakar, learned counsel for 1st respondent, learned Standing Counsel for the Housing Board, appearing for R-1 and Sri K.Jamali, learned counsel appearing for Sri Mohd. Zia-Ul-Haq, learned counsel for 4th respondent.

17. The learned counsel for the appellant contended that the judgment of trial Court is not correct and that the trial Court erred in placing reliance on the judgment in O.S.No.27 of 1963 and its confirmation in C.C.C.A.No.122 of 1973 by this Court; that the property which was subject matter of that litigation is different from the present property and therefore, the judgment therein would not operate as *resjudicata*.

18. Learned counsel for the respondents supported the

findings of the Court below and contended that there was no necessity to interfere with the said findings.

19. I have noted the submissions of both sides.

20. Now the point for consideration is whether the judgment of the trial Court warrants any interference by this Court in appeal?

Point:-

21. Admittedly, the plaintiff had pleaded that he was only a perpetual lessee under a perpetual lease dt.20-11-1957 granted in his favour by Zohra Begum. Zohra Begum has not been impleaded as a party to the suit. Notwithstanding the fact that he is only a lessee, he has sought the relief of declaration of his title and for possession of Ac.7.00 gts of land in old Sy. No.162 of Mallepally village. Since the plaintiff had filed the suit in his capacity as a lessee, he cannot get any declaration that he is an absolute owner of the property. Therefore, prima facie, the relief claimed in the suit cannot be granted to him.

22. It is not disputed that in respect of Ac.50.00 gts of land in old Sy. No.162, Zohra Begum had filed O.S.No.27 of 1963 contending that she was a pattedar of the extent of Ac.177.03 gts of which the land of Ac.50.00 gts is a part, and it was dismissed and it also confirmed in C.C.C.A.No.172 of 1973. It is on record that a Special Leave Application against the judgment in the said CCCA and the same was also dismissed. The present suit for declaration is filed in respect of an extent of Ac.7.00 cts in the same survey number claiming under Zohra Begum as a permanent lessee. Even though the extent of lands in O.S.No.27 of 1963 and in the present suit are different but the basis of claim

is one and the same, and the same facts are alleged here which were alleged in that.

23. The trial Court had rightly rejected the plea that the judgment in O.S.No.27 of 1963 is vitiated by fraud since there is n evidence of it. Since there is identity of title between O.S.No.2 of 1963 and the present suit, even if the properties are different, in view of the decision of the Supreme Court in **Raj Lakshmi Dasi** (1 supra), the judgment therein would operate as *resjudicata*.

24. I therefore do not see any merit in this appeal and the same is accordingly dismissed with costs.

31. As a sequel, all the other miscellaneous petitions, if any pending, shall stand closed.

JUSTICE M.S. RAMACHANDRA RAO

Date : 24-06-2014
Kvr

[1] AIR 1953 S.C. 33